

# **COMPLIANCE AUDIT REPORT**

**STATE OF MAINE  
WORKERS' COMPENSATION BOARD**



**DUNLAP CLAIMS MANAGEMENT SERVICE  
SEPTEMBER 18, 2003**

**Monitoring, Audit & Enforcement (MAE) Division**

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# CONTENTS

SUMMARY .....	2
PENALTIES.....	6
♦ Section 205(3), M.R.S.A. Penalties (payable to injured employees).....	6
♦ Penalties Allowed by Law (Payable to the Workers' Compensation Board).....	7
39-A M.R.S.A. Sec. 359(2).....	7
39-A M.R.S.A. Sec. 360(1)(A) .....	7
39-A M.R.S.A. Sec. 360(1)(B) .....	7
39-A M.R.S.A. Sec. 360(2).....	7
INDEMNITY BENEFITS.....	8
A. Prompt Initial Payment of Benefits.....	8
B. Prompt Subsequent Payment of Benefits .....	8
C. Accuracy of Average Weekly Wage .....	8
D. Accuracy of Weekly Benefit Rate.....	8
FORM FILING.....	9
A. First Report (WCB-1).....	9
B. Wage Statement (WCB-2).....	9
C. Schedule of Dependent(s) and Filing Status Statement (WCB-2A) .....	9
D. Memorandum of Payment (WCB-3).....	9
E. Discontinuance or Modification (WCB-4).....	10
F. Discontinuance or Reduction Of Compensation (WCB-8) .....	10
G. Notice of Controversy (WCB-9).....	10
H. Statement of Compensation Paid (WCB-11).....	10

## SUMMARY

The Audit Division of the Maine Workers' Compensation Board examined 101 claim files for the period under examination (2001) to determine compliance with statutory and regulatory requirements in the following areas:

- Form filing
- Timeliness of indemnity payments
- Accuracy of indemnity payments

Dunlap Claims Management Service provides full-service claims management for a number of self-insured customers under their own NCCI reporting number. They also handle:

- All Central Maine Power claims (as of late 2001).
- A small caseload of Zurich claims.
- All LL Bean claims (on behalf of MEMIC).

Our sample was drawn only from those claims that are handled under Dunlap's own NCCI number. All of the other three entities either have, or will be audited separately during our current audit cycle.

Our original sample included only 100 claims. However, at the time of our on-site work, another claim was inadvertently presented to our auditor as part of the sampled claims. Due to similarities between that claim and the intended claim, our auditor reviewed most of the file before discovering that it was a separate claim. Her review of the aforementioned claim uncovered some significant issues that were addressed during the audit process. Therefore, that claim has been included in this report.

Of the 101 claims files audited:

- Twenty-four were "lost time" claims (Of the 24 "lost time" claims audited, eight were compensated.)
- Sixty-one were "medical only" claims.
- Sixteen were "incident only"<sup>1</sup> claims.

Our on-site audit of Dunlap began October 28, 2002 and ended October 31, 2002

The compliance tables found on pages 8 through 10 of this report are representative of our findings as of October 31, 2002. Since that time, the Audit Division has requested additional information, missing form filings, form corrections, and payment adjustments. Dunlap was prompt, thorough and courteous in its responses to those requests.

Following is a discussion of the aforementioned compliance tables and of the steps taken since October 31, 2002 to rectify identified noncompliance issues. This discussion also includes other significant issues identified by our audit.

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<sup>1</sup> "Incident only" claims incur no medical expenses and less than a day of lost time.

## **SUMMARY (continued)**

- Form filing compliance ranged from 58 percent to 100 percent.
  - ◆ One-hundred percent compliance was found in the filings of the following forms:
    - WCB-4, Discontinuance or Modification of Compensation
    - WCB-8, Certificate of Discontinuance or Reduction of Compensation
    - WCB-9, Notice of Controversy
  - ◆ Ninety-six percent compliance was found in the filings of WCB-1, Employer's First Report of Occupational Injury or Disease forms.
    - The First Report shown as "Not Filed" represents a claim where Dunlap's file contained conflicting information regarding lost time at the time of our on-site work.
      - ❖ We asked that Dunlap investigate this issue, and upon confirming that there was lost time, they promptly filed a First Report for this claim.
  - ◆ Eighty-eight percent compliance was found in the filings of WCB-3, Memorandum of Payment (MOP) forms.
    - The MOP shown as "Filed Late" was faxed to the Board 18 days after the employer received notice of the incapacity.
  - ◆ Eighty-seven percent compliance was found in the filings of WCB-11, Statement of Compensation forms.
    - Both of the WCB-11 forms shown as "Filed Late" were filed for the same claim. A third WCB-11 form was filed, but not required for that same claim.
      - ❖ It appears that the adjuster may have applied the former version of Rule 8.1 when filing WCB-11 forms for that claim.
  - ◆ Fifty-eight percent compliance was found in the filings of WCB-2, Wage Statement and WCB-2A, Schedule of Dependent(s) and Filing Status Statement forms.
    - The two WCB-2 forms shown as "Not Filed", and the two WCB-2A forms shown as "Not Filed" represent two controverted lost-time claims where no wage information had been filed at the time of our on-site work.
      - ❖ All four forms were promptly filed upon receipt of our request.
    - One WCB-2 and one WCB-2A were filed late on a controverted lost-time claim where compensation was later paid pursuant to a Mediation agreement.

## SUMMARY (continued)

- One WCB-2 and one WCB-2A were filed late on a controverted lost-time claim where no compensation was ever paid.
- One WCB-2 and one WCB-2A were filed late on a lost-time claim where compensation was promptly paid within 14 days of the employer's notice of a claim.

The most significant reason for late-filed and missing wage information appears to be that Dunlap may not have been aware of their obligation to file wage information on controverted claims for compensation, at the time the aforementioned claims were controverted. Current filing requirements for wage information were discussed in the Exit Conference (dated February 13, 2003).

- Incorrect dates were reported in Box 24 of the initial MOPs for two of the eight compensated claims.
  - ◆ Box 24 (Date Check Mailed) of the WCB-3, Memorandum of Payment (MOP), should accurately reflect the date that the initial indemnity payment is sent to the employee.
    - ❖ This issue was discussed in the Exit Conference (dated February 13, 2003).
- Eighty-six percent of the initial indemnity payments were made timely.
  - ◆ The initial indemnity payment shown as “29+” was issued to another carrier (as a reimbursement, pursuant to the terms of Mediation) 76 days after the Mediation agreement was signed.
    - ❖ Although this practice does not appear to be subject to the penalties of §324(2), it does appear to be in direct violation of §324(1). Therefore, we encourage Dunlap to make efforts to pay claims of this type within the timeframe provided by §324(1). This issue was discussed in the Exit Conference (dated February 13, 2003).
- Eighty-percent of subsequent payments were made timely.
  - ◆ One of the payments shown as “15+” was made 15 days after the preceding payment.
  - ◆ The other payment shown as “15+” had not been made at the time of our on-site work. It appears that the current adjuster overlooked the fact that her predecessor had filed a 21-day certificate that changed the employee's benefits from a “varying” rate to a “fixed” rate. Because no post-injury wages were received, the adjuster assumed that no additional benefits were due when she filed a 21-day certificate of discontinuance several months later.
    - ❖ This error was discovered through the audit process, and was brought to Dunlap's attention. They promptly investigated this matter, issued all benefits that had accrued between the effective dates of the two 21-day certificates, and submitted proof of payment (\$3,274.60).

## **SUMMARY (continued)**

- The average weekly wage (AWW) and weekly benefit rate were calculated correctly for 75 percent of the compensated claims audited. The reasons for the two incorrect AWWs and rates are as follows:
  - ◆ The Wage Statement for one claim contained post-injury earnings. Their inclusion reduced the AWW and weekly benefit rate, which resulted in an underpayment.
    - ❖ Upon notification of this error, Dunlap promptly issued an adjustment (\$27.38) and filed amended WCB forms.
  - ◆ Earnings for the employee's week-of-hire were included in the AWW calculation for the other claim. Their inclusion reduced the AWW and weekly benefit rate; however, this employee was paid three extra days of compensation. Therefore, the aggregate of these two errors resulted in a net overpayment of \$49.90.
    - ❖ Upon notification of these errors, Dunlap promptly amended and resubmitted all WCB forms affected by the AWW and rate corrections.

The Audit Division would like to thank Dunlap Claims Management Services and its staff for the use of their facilities, and for promptly and courteously providing all materials and information necessary to complete this audit in a proficient manner.

The penalties listed on pages 6 and 7 of this report are representative of compliance as measured on December 20, 2002. (December 20, 2002 was the deadline given for response to the Audit Division's request for information, forms and corrections needed.)

## PENALTIES

### ◆ Section 205(3), M.R.S.A. Penalties (payable to injured employees)

“When there is not an ongoing dispute, if weekly compensation benefits or accrued weekly benefits are not paid within 30 days after becoming due and payable, \$50 per day must be added and paid to the worker for each day over 30 days in which the benefits are not paid. Not more than \$1,500 in total may be added pursuant to this subsection. For purposes of ratemaking, daily charges paid under this subsection do not constitute elements of loss.”

Penalties pursuant to 39-A M.R.S.A. Sec. 205(3) are paid directly to the injured employee. The penalties below are being sought. If you disagree, you have the right to a hearing before the Abuse Investigation Unit. Please provide proof of payment for all undisputed penalties.

CLAIM	PENALTY JUSTIFICATION	PENALTY AMOUNT
Thomas Blancato vs. Hebert Construction Date of Injury: 2-15-01 Dunlap's File Number: 01130081 WCB File #: 1-8365	The final indemnity payment (11-5-02) was made 322 days after compensation became due and payable (12-18-01).	\$1,500.00
<hr/> <b>Total Penalties to Injured Employees</b>		<b>\$1500.00</b>

## **PENALTIES (Continued)**

### **◆ Penalties Allowed by Law (Payable to the Workers' Compensation Board)**

39-A M.R.S.A. Sec. 359(2)

“In addition to any other penalty assessment permitted under this Act, the board may assess civil penalties not to exceed \$10,000 upon finding, after hearing, that an employer, insurer or 3<sup>rd</sup>-party administrator for an employer has engaged in a pattern of questionable claims-handling techniques or repeated unreasonably contested claims. The board shall certify its findings to the Superintendent of Insurance, who shall take appropriate action so as to bring any such practices to a halt. This certification by the board is exempt from the provisions of the Maine Administrative Procedure Act.”

39-A M.R.S.A. Sec. 360(1)(A)

“The board may assess a civil penalty not to exceed \$100 for each violation on any person: Who fails to file or complete any report or form required by this Act or rules adopted under this Act;”

39-A M.R.S.A. Sec. 360(1)(B)

“The board may assess a civil penalty not to exceed \$100 for each violation on any person: Who fails to file or complete such a report or form within the time limits specified in this Act or rules adopted under this Act.”

➤ Fourteen (14) forms were filed late (\$1,400.00).

39-A M.R.S.A. Sec. 360(2)

“The board may assess, after hearing, a civil penalty in an amount not to exceed \$1,000 for an individual and \$10,000 for a corporation, partnership or other legal entity for any willful violation of this Act, fraud or intentional misrepresentation. The board may also require that person to repay any compensation received through a violation of this act, fraud or intentional misrepresentation or to pay any compensation withheld through a violation of this Act, fraud or misrepresentation, with interest at the rate of 10% per year.



## INDEMNITY BENEFITS

### A. Prompt Initial Payment of Benefits

			2001	
			Number	Percent
Check Mailed Within:				
0-14	Days	<b>Compliant</b>	6	86%
15-28	Days		0	0%
29+	Days		1	14%
Total Due			7	100%

*In addition to the initial payments shown above, a NOC was timely-filed on a claim that was later found to be compensable (and was paid) prior to Mediation.*

### B. Prompt Subsequent Payment of Benefits

			2001	
			Number	Percent
Check Mailed Within:				
0-7	Days	<b>Compliant</b>	47	80%
8-14	Days		10	17%
15 +	Days		2	3%
Total Due			59	100%

### C. Accuracy of Average Weekly Wage

			2001	
			Number	Percent
Calculated:				
Correct		<b>Compliant</b>	6	75%
Incorrect			2	25%
Total			8	100%

### D. Accuracy of Weekly Benefit Rate

			2001	
			Number	Percent
Calculated:				
Correct		<b>Compliant</b>	6	75%
Incorrect			2	25%
Total			8	100%

## FORM FILING

### A. First Report (WCB-1)

		2001	
		Number	Percent
Received at the Board:			
Filed	<b>Compliant</b>	23	96%
Filed Late		0	0%
Not Filed		1	4%
Total		24	100%

### B. Wage Statement (WCB-2)

		2001	
		Number	Percent
Received at the Board:			
Filed	<b>Compliant</b>	7	58%
Filed Late		3	25%
Not Filed		2	17%
Total		12	100%

### C. Schedule of Dependent(s) and Filing Status Statement (WCB-2A)

		2001	
		Number	Percent
Received at the Board:			
Filed	<b>Compliant</b>	7	58%
Filed Late		3	25%
Not Filed		2	17%
Total		12	100%

### D. Memorandum of Payment (WCB-3)

		2001	
		Number	Percent
Received at the Board:			
Filed	<b>Compliant</b>	7	88%
Filed Late		1	12%
Total		8	100%

## FORM FILING (Continued)

### E. Discontinuance or Modification (WCB-4)

		2001	
		Number	Percent
Received at the Board:			
Filed	<b>Compliant</b>	9	100%
Not Filed		0	0%
Total		9	100%

### F. Discontinuance or Reduction Of Compensation (WCB-8)

		2001	
		Number	Percent
Received at the Board:			
Filed	<b>Compliant</b>	2	100%
Not Filed		0	0%
Total		2	100%

### G. Notice of Controversy (WCB-9)

		2001	
		Number	Percent
Received at the Board:			
Filed	<b>Compliant</b>	10	100%
Filed Late		0	0%
Total		10	100%

### H. Statement of Compensation Paid (WCB-11)

		2001	
		Number	Percent
Received at the Board:			
Filed	<b>Compliant</b>	13	87%
Filed Late		2	13%
Total		15	100%

*In addition to the WCB-11 forms listed above, Dunlap also filed one WCB-11 form that was not required.*